

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

FRIDAY, THE SEVENTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

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WRIT PETITION NO : 5151 of 1997

Between:

B.Narsing Rao S/o.late Sri.B.Rangaiah
Flat No.103, Vishnu Sadan Apartments 76,
Shanthinagar, Hyderabad

..... PETITIONER

AND

- 1 A.P.Khadi & Village Industries Board,
rep. by the Chief Executive Officer, Hyderabad
- 2 The State of A.P., rep. by the Secretary to Government

Small Scale Industries & KVIB
A.P., Secretariat, Hyderabad

(CT is amended as per Court Order dt.17-09-2004

in W.P.M.P.22410/99).

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate writ, order or direction especially one in the nature of mandamus directing the respondents to pay the arrears of salary as per the Scale of Pay attached to the Functional Manager Grade-II from the date of my taking charge as the Functional Manager with all consequential benefits with regard to the leave salary, pension and gratuity etc., and pass such other order.

Counsel for the Petitioner:MR.D.V.SITARAMAMURTHY

Counsel for the Respondent No.1 : N.N.Prasuna.

Counsel for the Respondent No.2: G.P. FOR INDUSTRIES

The Court made the following :

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ORDER:

This Writ petition is filed by the petitioner praying for issuance of Writ of Mandamus directing the respondents to pay the arrears of salary as per the scale of pay attached to the Functional Manager, Grade-II, from the date when the petitioner was given in-charge and was asked to discharge the functions as in-charge Functional Manager, with all consequential benefits, holding that non-payment of the same as illegal, arbitrary and discriminatory and offends the provisions of Constitution of India.

2. According to the petitioner, he was appointed as a Stenographer in A.P.Khadi and Village Industries Board, Hyderabad, and he retired as in-charge Functional Manager on 31-01-1996 after putting in about 36 years of service. It is stated that during the course of his service, he was promoted as Development Officer. Further, the State Government issued G.O.Ms.No.141, dated 06-03-1981, sanctioning 11 posts of Functional Managers Grade-II. Originally, some of the Development Officers were promoted during the year 1988, but, subsequently, the Government imposed ban for filling up the posts of Functional Managers on the ground that there were no regulations for filling up those posts. Subsequently, at the request of the Board, the Government permitted the Board to fill up the Functional Managers Grade-II, by making in-charge arrangements from the Senior Developments Officers. The said in-charges were also directed to be placed only after selection of the Senior Development Officers by a selection process. Accordingly, the petitioner along with others was appointed as in-charge Functional Manager Grade-II, and assumed charge on 23-01-1993. Thereafter, the Board of the respondent corresponded with the Government and finally obtained the approval of the Rules by issuance of

G.O.No.Esst/G1/26/79, dated 29-01-1996, under which the Rules were approved as to the selection and appointment by promotion to the posts of Functional Manager Grade-II. But, however, unfortunately, the petitioner retired from service within two days from the date of the approval of those Rules. It is stated that the other persons, who were working as in-charge Functional Managers, were regularly promoted in accordance with the Rules and they were paid the scale of pay attached to the post of Functional Manager Grade-II. As the petitioner was not paid the scales that were attached to the post of Functional Manager Grade-II, he has come up with the present Writ Petition.

3. According to the petitioner, he was given in-charge of the post of Functional Manager Grade-II and he had discharged the same functions as that of regular Functional Managers. Therefore, he is entitled for all the benefits of a regular Functional Manager. But, however, as no scale of pay attached to the said post was paid, the petitioner is entitled and, accordingly, he sought for appropriate directions.

4. A counter is filed on behalf of the respondents disputing and denying the claims of the petitioner. In the counter it is admitted that the Government was pleased to sanction 117 additional posts through G.O.Ms.No.141, dated 16-03-1981, including 11 posts of Functional Managers. It is also directed that the existing personnel working in the Board as far as possible be appointed against the additional posts under the above G.O. provided they are qualified and eligible to hold those posts. It is only in respect of the left over posts, they should be filled up either by resorting to deputation of qualified and experienced personnel or by direct recruitment. It is also stated that the Government by its proceedings dated 17-03-1988 directed the Board not to fill up the post of Functional Manager till the Regulations for the post of Functional Managers are finalized and issued. Thereafter, the Board sent the draft Recruitment Regulations for filling the post of Functional Managers. But, pending approval of those Regulations, the Board also requested the Government to permit the Board to fill up the posts of the Functional Managers by way of in-charge arrangement with the Senior Developmental Officers to which the Government had permitted the Board. Thereafter, the Board, after selection process, appointed the petitioner also as one of the in-charge Functional Manager, who assumed the charge on 18-01-1993, but retired on 31-01-1996. As the petitioner was neither

promoted as Functional Manager nor entrusted with higher responsibilities but posted as Functional Manager in-charge only with the same duties and responsibilities attached to the post of Development Officer, the post which he was holding, he is not entitled for any pay scale of the post of Functional Manager. Therefore, requested the Court to dismiss the Writ Petition.

5. The learned counsel for the petitioner at the time of arguments contended that as the petitioner discharged the functions as Functional Manager, he is entitled for the scale of pay that was being paid to the regular Functional Manager. In support of his contention he relied upon the decisions of **JAIPAL v. STATE OF HARYANA**, **BHAGWAN DASS v. STATE OF HARYANA** and **SANDEEP KUMAR v. STATE OF UTTAR PRADESH**.

6. Heard both the learned counsel and considered the material on record.

7. The simple issue that arise for consideration in this Writ Petition is:

Whether the petitioner is entitled for the relief of extension of the pay scales attached to the post of Functional Manager for the period for which he was given in-charge of the said post?

8. The claim of the petitioner is that additional posts of Functional Managers were sanctioned by the Government. Though some of the posts were filled up, but, subsequently, it was banned by the Government and they were not filled up. Therefore, the respondent Board after obtaining permission of the Government made in-charge arrangements and in that process, the petitioner was also given in-charge of the post of Functional Manager, and accordingly, he discharged his duties as Functional Manager Grade-II. Therefore, he is entitled for the benefit of the scale of pay attached to the said post. It is also contended that after the draft Rules were approved by the Government, the other persons, who were also placed as in-charge Functional Managers along with the petitioner, were regularly promoted and they were given the benefit of scale of pay attached to the said post, but, as the petitioner

retired, he did not get any benefit. Therefore, as the denial of the said benefit to the petitioner is discriminatory, he sought for appropriate directions.

9. It is the fact that the Government sanctioned eleven additional posts of Functional Managers. In fact, the affidavit of the petitioner itself shows that these Additional Posts are Development Officers to work as Functional Managers, may be with higher scale of pay. But, as long as the petitioner was not regularly promoted, he cannot claim the scale attached to the said post. Further, it is the contention of the respondents that the petitioner was not entrusted with any additional duties and responsibilities even after he was given in-charge of the Functional Manager post and he was discharging the same functions, which he was discharging as Development Officer. When once there is no change in the duties and responsibilities, which the petitioner was discharging prior to the in-charge arrangement, he cannot claim any benefit. In fact, the matter came up for hearing on earlier occasion and it was adjourned after hearing in order to ascertain whether the benefit of higher scale of pay was extended with reference to the other similarly placed persons, who are subsequently regularly promoted after framing of the Rules. On ascertainment, the learned counsel for the petitioner reported that the scale of pay was not extended to those persons for the period for which they were holding the posts as in-charges. Therefore, there is no merit in the contention of the petitioner that he was discriminated. No doubt, some other persons, who were regularly promoted as Functional Managers might have been paid the scale of pay attached to those posts, but, the petitioner and others during the interregnum period till the Rules are approved by the Government, were asked to hold the posts as In-charges. None of them were paid with the scale of pay attached to the said posts for that period. Therefore, there is no merit in the contention of the petitioner that he was discriminated when such benefit of higher scale of pay was not extended to any other person, who also held the post by way of in-charge. The petitioner was treated on par with others. Merely, because the petitioner retired immediately after the approval of the Rules and he could not get the benefit of regular promotion because of his retirement, he cannot claim that he was discriminated.

10. Under the above circumstances, there are no merits in the Writ Petition and the same is accordingly dismissed. No costs.

(S.ANANDA REDDY, J)

Dated: 17..09..2004

Prv

To

- 1 The Chief Executive Officer, A.P.Khadi & Village Industries Board,
Hyderabad
- 2 The Secretary to Government Small Scale Industries & KVIB
A.P., Secretariat, Hyderabad
- 3 2CCs to G.P. for Industries, High Court Buildings, Hyderabad(OUT)
- 4 2CD copies